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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200413-0110]

RIN 0648-BJ41

Pacific Island Fisheries; 2019-2021 Annual Catch Limits and Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes annual catch limits (ACLs) and accountability measures (AMs) in the main Hawaiian Islands (MHI) for deepwater shrimp, precious corals, and gray jobfish (uku) in 2019-2021, and for Kona crab in 2019. This rule supports the long-term sustainability of Pacific Island fisheries.

DATES: The final rule is effective *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*. The final rule is applicable in fishing years 2019, 2020, and 2021 for deepwater shrimp, precious corals, and gray jobfish, and fishing year 2019 for Kona crab.

ADDRESSES: Copies of the Fishery Ecosystem Plan for the Hawaii Archipelago (Hawaii FEP) are available from the

Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Copies of the environmental analyses and other supporting documents for this action are available from <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-1024>, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808-725-5185.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around Hawaii under the Hawaii FEP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), with regulations at 50 CFR part 665. The FEP contains a process for the Council and NMFS to specify ACLs and AMs; that process is codified at 50 CFR 665.4. NMFS must specify an ACL and AM(s) for each stock and stock complex of management unit species (MUS) in an FEP, as recommended by the Council and considering the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council to take action,

which may include reducing the ACL for the subsequent fishing year by the amount of the overage, or other appropriate action.

This rule establishes ACLs and AMs for MHI deepwater shrimp, precious corals, and uku for 2019-2021, and for Kona crab for 2019 (see Table 1). The rule is consistent with recommendations made by the Council at its October 2017 and October 2018 meetings. The Council recommended that NMFS implement ACLs and AMs for 2019, 2020, and 2021 for all stocks, except for MHI Kona crab, which they recommended that NMFS implement an ACL and AM only for 2019 because a new stock assessment is available to support ACL recommendations for this stock for 2020 and beyond. The fishing year for each fishery begins on January 1 and ends on December 31, except for precious coral fisheries, which begin July 1 and end on June 30 of the next year.

Table 1 -- ACLs for Stocks in This Final Rule

Stock	ACL (lb)	Year(s)
Kona crab	3,500	2019
Deepwater shrimp	250,773	2019-2021
Uku	127,205	2019-2021
Auau Channel - Black coral	5,512	2019-2021
Makapuu Bed - Pink and red coral	2,205	2019-2021
Makapuu Bed - Bamboo coral	551	2019-2021
180 Fathom Bank - Pink and red coral	489	2019-2021
180 Fathom Bank - Bamboo coral	123	2019-2021
Brooks Bank - Pink and red coral	979	2019-2021
Brooks Bank - Bamboo coral	245	2019-2021
Kaena Point Bed - Pink and red coral	148	2019-2021

Stock	ACL (lb)	Year(s)
Kaena Point Bed - Bamboo coral	37	2019-2021
Keahole Bed - Pink and red coral	148	2019-2021
Keahole Bed - Bamboo coral	37	2019-2021
Hawaii Exploratory Area - precious	2,205	2019-2021

As an AM for each stock, NMFS and the Council will evaluate the catch after each fishing year to determine if the average catch of the three most recent years exceeds its ACL. If it does, the Council would recommend a reduction of the ACL of that fishery in the subsequent year equal to the amount of the overage. In the event that NMFS needs to reduce an ACL because a fishery exceeded its ACL, we would implement the AM through a separate rulemaking.

In addition to this post-season AM, this rule implements a new in-season AM for the uku fishery where, if NMFS projects that catch will reach the ACL, NMFS would close the commercial and non-commercial uku fisheries in Federal waters around the MHI for the remainder of the fishing year. This in-season AM will be implemented only for fishing years 2019 and 2020. The Council initially recommended this AM for uku, along with an ACL of 127,205 lb and the post-season AM, at the October 2017 meeting. That recommendation covered three fishing years: 2018, 2019, and 2020. At the October 2018 meeting, the Council updated the recommendations for uku for fishing years 2019

through 2021, but only recommended the ACL of 127,205 lb and the post-season AM. Because the October 2018 Council meeting did not address the in-season AM, this management measure will not be applied for fishing year 2021.

There is also an existing in-season AM for the precious coral fishery that will close individual coral beds if the ACL for that bed is projected to be reached. This rule makes housekeeping changes to the text pertaining to this AM that are described below.

For all stocks except uku, the ACLs and AMs are identical to those most recently specified, in 2017. The Council did not recommend, and NMFS did not implement, ACLs and AMs for any of the these fisheries in 2018, while the Council and NMFS developed the amendment to its fishery ecosystem plans to reclassify certain MUS as ecosystem component species (ECS), which do not require ACLs and AMs. This action is the first time that ACLs and AMs will be implemented for uku as a single-species stock.

In addition to codifying the ACLs, this rule makes housekeeping changes to the regulations. First, the rule corrects a cross-reference in 50 CFR 665.4(c) that pertains to ACL requirements. The current regulation references a subsection under National Standard 1 that was changed on October 18, 2016 (81 FR 71858). This rule updates the CFR

to refer to the correct subsection on exceptions to ACL requirements (§ 600.310(h)(1)), rather than the subsection on flexibility for endangered species and aquaculture operations (§ 600.310(h)(2)).

This rule makes three housekeeping changes related to management of Hawaii precious corals. This rule removes subsection (b) in § 665.269, which refers to nonselective harvest of precious coral in conditional beds, because nonselective harvest of precious coral is not permitted in any precious coral permit area (see § 665.264). This rule also removes references in §§ 665.267 and 665.268 to a two-year fishing period for Makapuu Bed and Auau Channel Bed, because NMFS now manages these beds on the same one-year fishing year as all other coral beds. This rule also replaces the term "quota" with "ACL" in §§ 665.263, 665.268, and 665.269, to make the language governing catch limits consistent throughout the regulations.

Comments and Responses

On February 10, 2020, NMFS published a proposed rule and request for public comments (85 FR 7521). The comment period ended March 2, 2020. NMFS received comments from seven individuals that generally supported the ACL and AMs, and responds below.

Comment 1: Why does the rule affect Kona crab for only one year, and why will NMFS and the Council wait for a new stock assessment to address management for subsequent years?

Response: The Council recommended 2019 ACL and AMs for Kona crab in October 2018. At that time, NMFS was preparing a stock assessment that would include updated catch projections for management use beginning in 2020. The Council limited their recommendations for Kona crab to 2019 with the understanding that they would recommend ACLs and AMs for Kona crab in subsequent years when the new stock assessment became available. This process allows NMFS and the Council to use information provided in the new stock assessment to inform management for 2020 and beyond, and is consistent with National Standard 2 of the Magnuson-Stevens Act, which requires NMFS to use the best scientific information available.

Comment 2: Lower ACLs would promote greater biodiversity and prevent effects from rising ocean temperatures.

Response: NMFS acknowledges that biodiversity and climate change are important considerations. We evaluated these issues in the environmental assessments supporting this management action, and the best available information does not indicate that the fisheries covered by this rule affect biodiversity or are affected by increased ocean temperatures.

Comment 3: How are the rules enforced?

Response: NOAA's Office of Law Enforcement and the U.S. Coast Guard enforce Federal fisheries rules. They conduct enforcement activities both on and off the water, and conduct related criminal and civil investigations. The Enforcement Section of the NOAA Office of General Counsel provides legal support to the NOAA Office of Law Enforcement and other NOAA offices, and prosecutes cases.

Changes From the Proposed Rule

This final rule contains no changes from the proposed rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that this action is necessary for the

conservation, management, and long-term sustainability of the subject fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 665

Annual catch limits, Accountability measures, Bottomfish, Deepwater shrimp, Precious corals, Kona crab, Uku, Fisheries, Fishing, Hawaii, Pacific Islands.

Dated: April 13, 2020.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends
50 CFR part 665 as follows:

PART 665 - FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.4, revise paragraph (c) to read as
follows:

§ 665.4 Annual catch limits.

* * * * *

(c) *Exceptions.* The Regional Administrator is not
required to specify an annual catch limit for an ECS, or
for an MUS that is statutorily excepted from the
requirement pursuant to 50 CFR 600.310(h)(1).

* * * * *

3. In § 665.204, revise paragraphs (h) and (i) to read
as follows:

§ 665.204 Prohibitions

* * * * *

(h) Fish for or possess any bottomfish MUS as defined in § 665.201, in the MHI management subarea after a closure of its respective fishery, in violation of § 665.211.

(i) Sell or offer for sale any bottomfish MUS as defined in § 665.201, after a closure of its respective fishery, in violation of § 665.211.

* * * * *

4. Revise § 665.211 to read as follows:

§ 665.211 Annual Catch Limits (ACL) .

(a) In accordance with § 665.4, the ACLs for MHI bottomfish fisheries for each fishing year are as follows:

Fishery	2018-19 ACL (1b)	2019-20 ACL (1b)	2020-21 ACL (1b)
Deep 7 bottomfish	492,000	492,000	492,000

Fishery	2019 ACL (1b)	2020 ACL (1b)	2021 ACL (1b)
Uku	127,205	127,205	127,205

(b) When a bottomfish ACL is projected to be reached based on analyses of available information, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than seven days after the date

of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the ACL is reached.

(c) On and after the date specified in paragraph (b) of this section, no person may fish for or possess any bottomfish MUS from a closed fishery in the MHI management subarea, except as otherwise allowed in this section.

(d) On and after the date specified in paragraph (b) of this section, no person may sell or offer for sale any bottomfish MUS from a closed fishery, except as otherwise authorized by law.

(e) Fishing for, and the resultant possession or sale of, any bottomfish MUS by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

5. Add § 665.253 to read as follows:

§ 665.253 Annual Catch Limits (ACL) .

In accordance with § 665.4, the ACLs for MHI crustaceans for each fishing year are as follows:

Fishery	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Kona crab	3,500	NA	NA
Deepwater shrimp	250,733	250,733	250,733

6. In § 665.263, revise paragraph (b) (3) to read as follows:

§ 665.263 Prohibitions.

* * * * *

(b) * * *

(3) In a bed for which the ACL specified in § 665.269 has been attained.

* * * * *

7. Revise § 665.267 to read as follows:

§ 665.267 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

8. In § 665.268, revise paragraph (a) to read as follows:

§ 665.268 Closures.

(a) If the Regional Administrator determines that the ACL for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the fishery shall be closed, the reason for the closure, the specific bed being closed, and the effective date of the closure.

* * * * *

9. Revise § 665.269 to read as follows:

§ 665.269 Annual Catch Limits (ACL) .

(a) *General*. The ACLs limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in paragraph (c) of this section. Only live coral is counted toward the ACL. The accounting period for each fishing year for all precious coral ACLs begins July 1 and ends June 30 of the following year.

(b) *Reserves and reserve release*. The ACL for exploratory area X-P-H will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Hawaii exploratory areas will equal the ACL minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of Hawaii precious coral for each exploratory area equal to the ACL minus two times the amount harvested by vessels of the United States in that July 1-December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(c) In accordance with § 665.4, the ACLs for MHI precious coral permit areas for each fishing year are as follows:

Table 1 to paragraph (c)

Type of coral bed	Area and coral group	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Established bed	Auau Channel - Black coral	5,512	5,512	5,512
	Makapuu Bed - Pink and red coral	2,205	2,205	2,205
	Makapuu Bed - Bamboo coral	551	551	551
Conditional Beds	180 Fathom Bank - Pink and red coral	489	489	489
	180 Fathom Bank - Bamboo coral	123	123	123
	Brooks Bank - Pink and red coral	979	979	979
	Brooks Bank - Bamboo coral	245	245	245
	Kaena Point Bed - Pink and red coral	148	148	148
	Kaena Point Bed - Bamboo coral	37	37	37
	Keahole Bed - Pink and red coral	148	148	148
	Keahole Bed - Bamboo coral	37	37	37
Exploratory Area	Hawaii - precious coral	2,205	2,205	2,205

Note 1 to § 665.269: No fishing for coral is authorized in refugia.

Note 2 to § 665.269: A moratorium on gold coral harvesting is in effect through June 30, 2023.

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